

Tran (Migration) [2024] AATA 1435 (17 May 2024)

DECISION RECORD

DIVISION:	Migration & Refugee Division
REVIEW APPLICANT:	Ms Anh Thu Tran
VISA APPLICANTS:	Mr Tuan Anh Nguyen Ms Thuy Anh Nguyen
REPRESENTATIVE:	Mr Huu Loc Nguyen (MARN: 1795573)
CASE NUMBER:	2119980
HOME AFFAIRS REFERENCE(S):	BCC2019/2276963
MEMBER:	Donna Petrovich
DATE:	17 May 2024
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal remits the applications for reconsideration, with the direction that the first named visa applicant meets the following criteria for a Subclass 309 visa: • cl 309.211(2) of Schedule 2 to the Regulations As the first named visa applicant meets the criteria for the visa, it follows that the secondary applicant satisfies cl 309.321 and meets the criteria for the visa grant.

Statement made on 17 May 2024 at 10:20am

CATCHWORDS

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – genuine and continuing relationship – Certificate of Marriage – joint international travel – joint bank account and utilities – support statements from relatives and friends – cohabitation – decision under review remitted

LEGISLATION

*Migration Act 1958, ss 5, 65
Migration Regulations 1994, Schedule 2, cls 309.211, 309.321*

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Home Affairs to refuse to grant the applicants Partner (Provisional) (Class UF) visas under s 65 of the *Migration Act 1958* (Cth) (the Act). The applicants applied for the visas on 26 April 2019. The delegate refused to grant the visas on 13 December 2021.
2. The delegate determined that the couple were not legally married and did not satisfy s 5F of the Act as they had provided what was considered by the delegate to be a ceremonial marriage certificate.
3. Consequently, the delegate proceeded to consider whether at the time of application, the applicant was the de facto partner of the sponsor.
4. The delegate formed the view that the evidence was insufficient to establish that the couple's relationship was a genuine, ongoing de facto partnership. It was determined by the delegate that s 5CB was not met and consequently cl 309.211(2) was not satisfied by the first named visa applicant. Nor was cl 309.211(3) met by the first named visa applicant according to the delegate. The delegate concluded that the evidence was insufficient to satisfy the criterion for the visa grant under the *Migration Regulations 1994* (Cth) (the Regulations).
5. In reference to the secondary applicant, the delegate determined that they did not meet the primary criteria, being cl 309.211(2) and 309.211(3)) or the secondary criteria in 309.321 of the Regulations.
6. The applicants, the first named visa applicant and the sponsor/review applicant, appeared before the Tribunal on 15 May 2024 to give evidence and present arguments.

7. Background

8. The couple met at a BBQ of a mutual friend. This mutual friend owned an Asian Grocery shop and became good friends with the sponsor. The couple met by chance, started talking and exchanged telephone numbers.
9. The first named visa applicant became the sponsor's friend, supporting her as she was going through some personal difficulties at this time.
10. Both the first named visa applicant and the sponsor were married previously. At the time of their initial meeting, they were both divorced. The first named visa applicant has two children from his previous relationship. He has custody of one child, whilst the other child lives with his former wife.
11. The first named visa applicant is currently unable to work because of his visa restrictions. This has placed financial stress on the family who are supported by the sponsor. In particular, the family struggled during Covid as they had little or no income available to them. The sponsor presently works in a nail salon.
12. The Tribunal heard that the first named visa applicant does the majority of the household duties including the cooking. The couple spend Sundays together shopping and catching up with friends and family.

13. At the hearing the Tribunal received the Marriage Certificate that the couple had provided to the Department. This document also appears in the Department file. It is the finding of the Tribunal that this is a Commonwealth Marriage Certificate evidencing the couple's lawful marriage on 3 February 2018. The first named visa applicant registered the marriage with the celebrant, Mr Nyguen, who conducted the marriage in Footscray.
14. At the hearing it was clarified that the Certificate of Marriage provided to the Department and contained in the Department file is sufficient to satisfy the Tribunal that the couple were lawfully married on 3rd February 2018.

15. **Written Evidence**

16. The Tribunal also accepted the other written material provided in support of the review, including the following:
 - Evidence of flights to Vietnam by the couple;
 - Receipt for airport hotel dated February 2023;
 - Contract for Transport in Vietnam in February 2023;
 - Receipt for car service in both names of the couple;
 - Joint bank account statements for the period 27 December 2023 – 10 May 2024;
 - Joint bank account statements for the period January 2018 – 22 June 2023;
 - Utility bills including Vodaphone and Origin Energy account statements in the sponsor's name
 - Document evidencing car insurance in the couple's joint names;
 - Joint statement of the couple, Nguyen Tuan Anh and Anh Thu Tran;
 - Statement from first named visa applicant's sister;
 - Joint statement in support from Vu Anh Tu and Tran Dung Tien (the sponsor's parents);
 - Joint statement from Nguyen Van Lan and Chu Thi Hong, the parents of the first named visa applicant;
 - The representative's submission to the Tribunal dated 8 May 2024;
 - Statutory declaration from Thu Ha Nguyen dated 4 May 2024;
 - Statutory declaration from Thi Ngoc Tham Le dated 29 April 2024;
 - Statutory declaration from Ngoc Minh Pham dated 4 May 2024;
 - Statutory declaration from Dinh Minh Vu dated 14 June 2023;
 - Written statement from Nhi Phuong Tran dated 28 April 2024;

- Photographs of the couple at family events including parties, outings with friends and weddings.

17. The Tribunal has considered the extensive evidence provided by the couple. The material clearly demonstrates that the couple are in a genuine, ongoing spousal relationship to the exclusion of all others, sharing their lives together on a permanent basis.
18. The Tribunal accepts the statutory declarations from family and friends, together with written witness statements and evidence provided during the Tribunal hearing as supporting the conclusion that the couple are spouses as per s 5F of the Act.
19. In light of the evidence the Tribunal is satisfied that the criteria are met and concludes that the matter should be remitted for reconsideration.

DECISION

20. The Tribunal remits the application for reconsideration, with the direction that the first named visa applicant meets the following criteria for a Subclass 309 visa:
 - cl 309.211(2) of Schedule 2 to the Regulations
21. As the first named visa applicant meets the criteria for the visa, it follows that the secondary applicant satisfies cl 309.321 and satisfies the criteria for the visa grant.
22.
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Donna Petrovich
Member